

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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UNITED STATES SECURITIES	:	
AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	0:11-cv-00723-ADM-JSM
MARLON QUAN, ACORN CAPITAL	:	
GROUP, LLC and STEWARDSHIP	:	
INVESTMENT ADVISORS, LLC,	:	
	:	
Defendants,	:	
	:	
and	:	
	:	
ASSET BASED RESOURCE GROUP,	:	
LLC and FLORENE QUAN,	:	
	:	
Relief Defendants	:	
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**AGREED MOTION TO FREEZE CERTAIN ASSETS PAID TO SCAF LLC  
FROM THE BANKRUPTCY ESTATE OF  
RALPH ESMERIAN AND HIS AFFILIATED ENTITIES**

Plaintiff, United States Securities and Exchange Commission (the "SEC"), and Defendants Marlon Quan ("Quan"), Acorn Capital Group, LLC ("Acorn"), and Stewardship Investment Advisers, LLC ("SIA") jointly move this Court for entry of an Agreed Order to preserve the *status quo* pending further order of this Court by freezing certain assets totaling \$1,025,756.00 that have been paid to Stewardship Credit Arbitrage Fund LLC ("SCAF LLC") in jointly administered bankruptcy proceedings for Ralph Esmerian and R. Esmerian, Inc. In support of this Motion, the parties state as follows:

**Background of the Existing Asset Freeze**

- 1) On March 24, 2011, the SEC filed its complaint in this matter against the defendants. Defendants filed their answer to the complaint on May 27, 2011.
- 2) SIA was the investment adviser to SCAF LLC and Stewardship Credit Arbitrage Fund Ltd. ("SCAF Ltd.").
- 3) On the same date it filed its Complaint in this action, the SEC filed a Motion seeking an asset freeze, appointment of a receiver, preliminary injunction, and other ancillary relief against Quan, Acorn, and SIA (Dkt. #2). Among other things, the motion requested that the Court freeze certain assets payable to SCAF LLC pursuant to the settlement of claims in the bankruptcy of several entities controlled by Thomas Petters (the "Petters Settlement Proceeds").
- 4) The Commission argued that, to preserve the *status quo*, SCAF LLC's share of the Petters Settlement Proceeds should be frozen pending a determination of an appropriate distribution. The defendants did not oppose the request that those proceeds be frozen.
- 5) On May 3, 2011, the Court issued a Memorandum Opinion and Order (the "Temporary Freeze Order") that, among other things, placed a temporary freeze on SCAF LLC's share of the Petters Settlement Proceeds. (Dkt. #51.) The Court's Order also denied the motion to freeze the defendant's assets, for a preliminary injunction, and for appointment of a receiver.

**The Esmerian Bankruptcy**

- 6) In addition to investments in notes of Petters' entities, SCAF LLC, SCAF Ltd., as well as Northlight Fund LP ("Northlight") invested in notes memorializing purported loans to entities owned and operated by Ralph Esmerian.

7) On May 24, 2010, SCAF LLC, SCAF Ltd., and Northlight filed involuntary petitions in the Bankruptcy Court for relief under Chapter 7 of the bankruptcy code against Ralph Esmerian and R. Esmerian, Inc. (the "Esmerian Debtors"). On July 23, 2010 the Bankruptcy Court converted the cases to proceedings under Chapter 11 of the Bankruptcy Code. The Esmerian Debtors' cases are captioned *In re Ralph Esmerian*, Case No. 10-12721 (RDD) (S.D.N.Y. Bkr.) and *In re R. Esmerian, Inc.*, Case No. 10-12719 (S.D.N.Y. Bkr.) (together the "Esmerian Bankruptcy Cases").

8) In the Esmerian Bankruptcy Cases, SCAF LLC is represented by the law firm of Klestadt & Winters, LLP ("K&W").

9) On January 28, 2011, SCAF LLC filed a proof of claim of \$24,071,311.14 against each of the Esmerian Debtors.

10) On May 3, 2011, SCAF LLC, Northlight, and SCAF Ltd. executed a settlement agreement with the Examiner in the Esmerian Bankruptcy Cases. Among other things, the settlement set forth the terms for a proposed auction of certain of Esmerian's assets and the distribution of the sale proceeds to SCAF LLC, SCAF Ltd., and Northlight.

11) As of this date, K&W is holding \$1,025,756.00, representing SCAF LLC's share of the net auction proceeds in the Esmerian Bankruptcy Cases (SCAF LLC's share of the "Esmerian Settlement Payments").

12) The Commission and the Defendants agree that it is appropriate that, as with the Petters payments, SCAF LLC's share of the proceeds of the Esmerian settlement should be frozen to preserve the *status quo* pending determination of an appropriate distribution.

13) Therefore, to preserve the *status quo*, the Commission and Defendants have agreed that SCAF LLC's share of the Esmerian Settlement Payments should be placed in escrow pending either (a) the agreement of the parties, or (b) further order of the Court.

14) SCAF LLC's counsel, K&W, has agreed to hold SCAF LLC's share of the Esmerian Settlement Payments in escrow until March 1, 2012, at which point the parties will, if necessary, designate an alternative repository for those assets.

15) Additional payments from the Esmerian Bankruptcy Cases have been directed to K&W for the benefit of SCAF Ltd. and Northlight. Nothing contained herein shall affect the rights of SCAF Ltd. or Northlight to receive their payments from the Esmerian Bankruptcy Cases.

16) K&W has informed the Commission that SCAF LLC has incurred \$27,077.89 in outstanding legal fees for services provided in the Esmerian Bankruptcy Cases through July 31, 2011. The parties agree that K&W may pay itself that amount from SCAF LLC's share of the Esmerian Settlement Payments and future amounts due on account of services provided to SCAF LLC in connection with this matter upon reasonable notice to SCAF LLC and the Commission.

17) K&W also has informed the Commission that there may be a small, but as yet undetermined, amount due from SCAF LLC as reimbursement for its share of insurance provided for the benefit of all investors in the Esmerian notes. The parties agree that K&W may submit supporting documents to the Commission and – upon the Commission's written approval – K&W may make that reimbursement insurance payment out of SCAF LLC's share of the Esmerian Settlement Payments.

WHEREFORE, Plaintiff SEC, and Defendants Acorn, Quan, and SIA jointly request that this Court grant their motion and enter an Order:

A. Requiring the law firm of Klestadt & Winters, LLP to hold SCAF LLC's share of the Esmerian Settlement Payments in an interest bearing escrow account until (a) March 1, 2012, (b) written agreement of the parties or (c) further order from the Court, whichever is earliest;

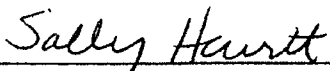
B. Requiring the parties to designate an alternate escrow account before March 1, 2012 in the event that the Commission's claims against the Defendants in this matter are not resolved by that date;

C. Requiring that – in the event that the parties are unable to agree on an alternate escrow account before March 1, 2012 – K&W shall pay SCAF LLC's share of the Esmerian Settlement Payments into the registry of this Court where it shall remain until either (1) the written agreement of the parties, or (2) further order from the Court; and

D. Requiring K&W to escrow any future payments obtained on behalf of SCAF LLC in the Esmerian Bankruptcy Cases according to the terms of the Order.

Respectfully Submitted,

U.S. SECURITIES AND EXCHANGE  
COMMISSION

  
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Dated: 11-1, 2011

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Dated: Nov 7, 2011

AGREED TO FORM OF MOTION  
AND PROPOSED ORDER:



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